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18RE-CC00014 - JAMES YATES ET AL V STATE FARM FIRE AND CASUALTY C (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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09/17/2018 Summons Personally Served

Document ID - 18-SMCC-486; Served To - CSC-LAWYERS INCORPORATING SERVICE COMPANY; Server - SO COLE COUNTY-JEFFERSON CITY; Served Date - 06-SEP-18; Served Time - 08:00:00; Service Type - Sheriff Department; Reason Description - Served

09/14/2018 Summons Issued-Circuit

Document ID: 18-SMCC-546, for EPSTEIN, LANETTE.

09/13/2018 Note to Clerk eFiling

Filed By: ROY EUGENE WILLIAMS JR.

Cert Serv of Interrog Filed

Certificate of Service of Plaintiffs First Interrogatories and RFP to Defendant Lanette Epstein.

Filed By: ROY EUGENE WILLIAMS JR.

On Behalf Of: JAMES YATES, HANNAH L YATES

Amended Motion/Petition Filed

First Amended Petition.

08/13/2018 Summons Issued-Circuit

Document ID: 18-SMCC-486, for CSC-LAWYERS INCORPORATING SERVICE COMPANY.

Summons Issued-Circuit

Document ID: 18-SMOS-39, for STATE FARM FIRE AND CASUALTY COMPANY.

08/10/2018 Filing Info Sheet eFiling

Filed By: ROY EUGENE WILLIAMS JR.

Cert Serv of Interrog Filed

Certificate of Service of Plaintiffs First Interrogatories RFP to Defendant.

Filed By: ROY EUGENE WILLIAMS JR.

On Behalf Of: JAMES YATES, HANNAH L YATES

Pet Filed in Circuit Ct

Petition.

Judge Assigned

18RE-CC00014

IN THE CIRCUIT COURT OF REYNOLDS COUNTY, MISSOURI
CIRCUIT DIVISION

PETITION

COME NOW the Plaintiffs, through counsel, and for their petition against Defendant, State Farm Fire & Casualty Company, hereinafter Defendant, states, alleges and avers as follows:

GENERAL ALLEGATIONS

1. That Defendant was and is at all times herein mentioned a Missouri insurance company; said Defendant maintains an agent in Reynolds County, Missouri, for the transaction of its usual customary business.
2. For and in consideration of the payment of a premium, Defendant issued to Plaintiffs its policy of insurance insuring Plaintiffs for certain perils including loss by fire to a home located at 131 Hwy 72, Bunker, MO 63629, including personal property contained therein; said policy was numbered 25-CV-P895-8 with effective dates of October 11, 2017 through October 11, 2018; that the worth of the residence at the time the policy was issued was \$133,000; that the worth of the personal property at the time the policy issued was \$99,750.00; and the policy provided coverage for additional living expense and incidental coverages including debris removal.

3. That Plaintiffs have complied with all the terms and conditions precedent under the terms of Defendant's policy of insurance.

4. That on or about December 12, 2017, Plaintiffs' home and personal property located therein was damaged by fire.

5. That as a direct result of the fire Plaintiffs have or will incur cost of debris removal.

6. That as a direct result of the fire Plaintiffs have and will continue to incur additional living expenses.

7. That Plaintiffs have demanded payment for amounts due under their policy but Defendant has refused and continues to refuse to pay such sums.

COUNT I

COME NOW the Plaintiffs and for Count I of their cause of action against Defendant, state, allege and aver as follows:

8. These Plaintiffs restate, reallege and incorporate by reference each and every allegation set forth in the "General Allegations" as if fully, accurately and completely set forth herein.

9. That as a direct result of the fire, Plaintiffs' home and personal property were rendered a partial loss.

10. That Defendant's policy provides, in part, as follows:

"When partial damages to covered property is caused by the peril of fire, we will pay for the damage done to the property or repair the property to the extent of the damage, at your option. Payment will not exceed the limits of liability of this policy, and the damaged property shall be in as good condition as before the fire."

11. That the actual cost of the damage to the residence was \$91,034.40 and the actual cost of the personal property destroyed was \$54,921.00.

12. In addition, Defendant contracted with two separate providers, ServPro and CRDN, to repair or reclaim certain items of personal property of Plaintiffs, which costs Defendant has failed, neglected and refused to satisfy and/or Defendant has otherwise failed, neglected and refused to take steps to secure the return of Plaintiffs' personal property currently being held by ServPro and/or CRDN.

WHEREFORE, Plaintiffs pray for judgment against Defendant in the amount of \$145,955.40; for replacement of personal property items taken by ServPro and/or CRDN at the specific request and instruction of Defendant, or alternatively, that Defendant be ordered to satisfy any outstanding costs owing to ServePro and/or CRDN and be ordered to insure the return of said personal property items to Plaintiffs herein; for additional living expenses and the cost of debris removal; and for such other costs and damages as a trier of fact determines; and for prejudgment interest; and for Plaintiffs' costs incurred herein.

COUNT II

COME NOW the Plaintiffs and for Count II of this cause of action against Defendant, and in the alternative to Count I above, state, allege and aver as follows:

13. That Plaintiffs restate, reallege and incorporate by reference herein each and every allegation set forth and contained in the "General Allegations" and Count I above as if fully, completely and accurately set forth herein.

14. That Plaintiffs' policy of insurance and the "Section I – Loss Settlement" provisions therein, specifically provides under "Coverage A – Dwelling" paragraph 1.A1 "Replacement Cost Loss Settlement – Similar Construction" that Defendant "will pay the cost to

repair or replace with similar construction and for the same use on the premises shown in the declarations, the damaged part of the property covered under Section I – Coverages, Coverage A – Dwelling, except for wood fences, subject to the following:

- (1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property."
15. That the actual cost to repair or replace the damaged residence is \$124,241.28.
16. That Defendant has breached the terms and conditions of these provisions of the policy by refusing to pay the actual cash value of the loss and thereby prevented Plaintiffs from replacing or repairing their damaged property.
17. That Defendant has failed, neglected and refused to pay the bill owing to ServPro in order for Plaintiffs to obtain the return of the repaired or reclaimed personal property items.
18. Further, Defendant's policy contains a provision under "Coverage B – Personal Property" paragraph 1.B1 "Limited Replacement Cost Loss Settlement", specifically subparagraph therein that:
 - (1) until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation;
 - (2) after repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have actually and necessarily spent to repair or replace the property;
19. That the cost to repair or replace the unscheduled personal property is \$54,921.

WHEREFORE, Plaintiffs pray for judgment against Defendant in the amount of \$179,162.28 for damage to the residence and personal property, for debris removal, and for additional living expenses in such amounts as the trier of fact determines; and for the costs of satisfying any indebtedness owing against Plaintiffs' personal property items to ServPro and the associated costs incurred in obtaining possession of Plaintiffs' repaired or reclaimed personal property items; for prejudgment interest; and for their costs incurred herein.

COUNT III

COME NOW the Plaintiffs and for Count III of their cause of action against Defendant; and in the alternative to Counts I and II above, state, allege and aver as follows:

20. That Plaintiffs restate, reallege and incorporate by reference herein each and every allegation set forth and contained in the "General Allegations" and Counts I and II above as if fully, completely and accurately set forth herein.

21. That the actual cash value of the damaged residence was \$133,000; that the actual cash value of the unscheduled property was \$54,921; that there is currently an indebtedness owing to ServPro for the return of Plaintiffs' repaired or reclaimed items, plus the costs incurred in regaining possession of said items.

WHEREFORE, Plaintiffs pray for judgment against Defendant in the amount of \$187,921 for damage to the residence and personal property, for additional living expenses and the cost of debris removal in such amounts as a trier of fact determines, for the cost of obtaining possession of Plaintiff's personal items currently being held by ServPro and/or CDRN; for prejudgment interest; and for such other and further relief and orders as the Court deems just and proper in the premises.

COUNT IV

COME NOW the Plaintiffs and for Count IV of their cause of action against Defendant, state, allege and avers as follows:

22. That Plaintiffs restate, reallege and incorporate by reference herein each and every allegation set forth and contained in the "General Allegations" and Counts I through III above as if fully, completely and accurately set forth herein.

23. RSMo. 375.420 provides as follows:

In any action against any insurance company to recover the amount of any loss under a policy of automobile, fire, cyclone, lightening, life, health, accident, employers' liability, burglary, theft, embezzlement, fidelity, indemnity, marine or other insurance except automobile liability insurance, if it appears from the evidence that such company has refused to pay such loss without reasonable cause or excuse, the court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed twenty percent of the first fifteen hundred dollars of the loss and ten percent of the first fifteen hundred dollars of the loss, and ten percent of the amount of the loss in excess of fifteen hundred and a reasonable attorney's fee; and the court shall enter judgment for the aggregate sum found in the verdict.

24. That the acts of Defendant above-described refusing to pay Plaintiffs their sums due without just reasonable cause or excuse entitle Plaintiffs to statutory damages, including penalties and attorney's fees.

WHEREFORE, Plaintiffs pray for judgment against Defendant for 20% of the first \$1,500 of the loss, and 10% of the amount in excess of that amount, and reasonable attorney's fees, and their costs incurred herein.

HENRY & WILLIAMS, P.C.

by: /s/ *Roy E. Williams, Jr.*
Roy E. Williams, Jr. #38712
P.O. Box 617
West Plains, MO 65775
Phone: 417/256-8133
Fax: 417/256-8969
Attorneys for Plaintiffs.



Notice of Service of Process

null / ALL
Transmittal Number: 18664278
Date Processed: 09/06/2018

Primary Contact: State Farm Enterprise SOP
Corporation Service Company- Wilmington, DELAWARE
251 Little Falls Dr
Wilmington, DE 19808-1674

Entity: State Farm Fire and Casualty Company
Entity ID Number 3461650

Entity Served: State Farm Fire and Casualty Company

Title of Action: James D. Yates vs. State Farm Fire & Casualty Company

Document(s) Type: Summons/Complaint

Nature of Action: Contract

Court/Agency: Reynolds County Circuit Court, Missouri

Case/Reference No: 18RE-CC00014

Jurisdiction Served: Missouri

Date Served on CSC: 09/06/2018

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Roy E. Williams, Jr.
417-256-8133

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com



IN THE 42ND JUDICIAL CIRCUIT, REYNOLDS COUNTY, MISSOURI

Judge or Division: KELLY WAYNE PARKER	Case Number: 18RE-CC00014
Plaintiff/Petitioner: JAMES YATES	Plaintiff's/Petitioner's Attorney/Address ROY EUGENE WILLIAMS JR. 1207 PORTER WAGONER P O BOX 617 WEST PLAINS, MO 65775
vs.	
Defendant/Respondent: STATE FARM FIRE AND CASUALTY COMPANY	Court Address: Reynolds County Courthouse P O Box 39 Centerville, MO 63633
Nature of Suit: CC Contract-Other	

FILED
8/13/2018
RANDY L. COWIN
CIRCUIT CLERK
REYNOLDS COUNTY, MO

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: CSC-LAWYERS INCORPORATING SERVICE COMPANY

Alias:

221 BOLIVAR STREET
JEFFERSON CITY, MO 65101

REYNOLDS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

AUGUST 13, 2018

Date

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

 delivering a copy of the summons and a copy of the petition to the defendant/respondent. leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent. (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title). other: _____

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ _____

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$. _____ per mile)

Total \$ _____

RECEIVED

SEP 04 2018

COLE COUNTY
SHERIFF'S OFFICE

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Return

IN THE 42ND JUDICIAL CIRCUIT, REYNOLDS COUNTY, MISSOURI

Judge or Division: KELLY WAYNE PARKER	Case Number: 18RE-CC00014	FILED 8/13/2018 RANDY L. COWIN CIRCUIT CLERK REYNOLDS COUNTY, MO
Plaintiff/Petitioner: JAMES YATES	Plaintiff's/Petitioner's Attorney/Address ROY EUGENE WILLIAMS JR. 1207 PORTER WAGONER P O BOX 617 WEST PLAINS, MO 65775	RECEIVED SEP 05 2018 COLE COUNTY SHERIFF'S OFFICE (Date File Stamp)
Defendant/Respondent: STATE FARM FIRE AND CASUALTY COMPANY	Court Address: Reynolds County Courthouse P O Box 39 Centerville, MO 63633	
Nature of Suit: CC Contract-Other		

Summons in Civil Case

The State of Missouri to: CSC-LAWYERS INCORPORATING SERVICE COMPANY
Alias:

221 BOLIVAR STREET
JEFFERSON CITY, MO 65101



REYNOLDS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

AUGUST 13, 2018

Date

Further Information:

Randy L. Cowin

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the defendant/respondent.
 leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

(for service on a corporation) delivering a copy of the summons and a copy of the complaint to:
CSC Lawyers, S.L. (name) *Designee* (title).

other: _____

Served at *350 E. High* (address)
in *Cole* (County/City of St. Louis), MO, on *9-6-18* (date) at *800 AM* (time).

John P. Wheeler
(Seal)

By *Sgt. Almero Wray*
Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer.

Subscribed and sworn to before me on _____ (date).

My commission expires: *SEP 17 2018*

FILED

Notary Public

*9/17/2018
B33*

Sheriff's Fees, If applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ <u>10.00</u>
Mileage	\$ _____ (miles @ \$ _____ per mile)
Total	\$ _____

SEP 17 2018

RANDY L. COWIN
CIRCUIT CLERK
REYNOLDS COUNTY, MO

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

18RE-CC00014

IN THE CIRCUIT COURT OF REYNOLDS COUNTY, MISSOURI
CIRCUIT DIVISION

CERTIFICATE OF SERVICE

COME NOW the Plaintiffs, by and through counsel, and certify that a true and correct copy of Plaintiffs' First Set of Interrogatories and Request for Production of Documents and Things to Defendants, along with a copy of this Certificate of Service were attached to the Summons and Petition to be served in this cause.

HENRY & WILLIAMS, P.C.

by: /s/ Roy E. Williams, Jr.
Roy E. Williams, Jr. #38712
1207 Porter Wagoner Blvd.
P.O. Box 617
West Plains, MO 65775
Phone: 417/256-8133
Fax: 417/256-8969
Attorneys for Plaintiff s

IN THE CIRCUIT COURT OF REYNOLDS COUNTY, MISSOURI
CIRCUIT DIVISION

FIRST AMENDED PETITION

COME NOW the Plaintiffs, through counsel, and for their petition against State Farm Fire & Casualty Company and Lanette Epstein, hereinafter Defendants, states, alleges and avers as follows:

GENERAL ALLEGATIONS

1. That separate Defendant, State Farm Fire & Casualty Company, was and is at all times herein mentioned a Missouri insurance company; said Defendant maintains an agent in Reynolds County, Missouri, for the transaction of its usual customary business.
2. For and in consideration of the payment of a premium, separate Defendant, State Farm Fire & Casualty Company, issued to Plaintiffs its policy of insurance insuring Plaintiffs for certain perils including loss by fire to a home located at 131 Hwy 72, Bunker, MO 63629, including personal property contained therein; said policy was numbered 25-CV-P895-8 with effective dates of October 11, 2017 through October 11, 2018; that the worth of the residence at the time the policy was issued was \$133,000; that the worth of the personal property at the time the policy issued was \$99,750.00; and the policy provided coverage for additional living expense and incidental coverages including debris removal.

3. That Plaintiffs have complied with all the terms and conditions precedent under the terms of Defendant's policy of insurance.

4. That on or about December 12, 2017, Plaintiffs' home and personal property located therein was damaged by fire.

5. That as a direct result of the fire Plaintiffs have or will incur cost of debris removal.

6. That as a direct result of the fire Plaintiffs have and will continue to incur additional living expenses.

7. That Plaintiffs have demanded payment for amounts due under their policy but separate Defendant, State Farm Fire & Casualty Company, has refused and continues to refuse to pay such sums.

COUNT I

COME NOW the Plaintiffs and for Count I of their cause of action against separate Defendant, State Farm Fire & Casualty Company, state, allege and aver as follows:

8. These Plaintiffs restate, reallege and incorporate by reference each and every allegation set forth in the "General Allegations" as if fully, accurately and completely set forth herein.

9. That as a direct result of the fire, Plaintiffs' home and personal property were rendered a partial loss.

10. That Defendant's policy provides, in part, as follows:

"When partial damages to covered property is caused by the peril of fire, we will pay for the damage done to the property or repair the property to the extent of the

damage, at your option. Payment will not exceed the limits of liability of this policy, and the damaged property shall be in as good condition as before the fire."

11. That the actual cost of the damage to the residence was \$91,034.40 and the actual cost of the personal property destroyed was \$54,921.00.

12. In addition, Defendant contracted with two separate providers, ServPro and CRDN, to repair or reclaim certain items of personal property of Plaintiffs, which costs Defendant has failed, neglected and refused to satisfy and/or Defendant has otherwise failed, neglected and refused to take steps to secure the return of Plaintiffs' personal property currently being held by ServPro and/or CRDN.

WHEREFORE, Plaintiffs pray for judgment against separate Defendant, State Farm Fire & Casualty Company, in the amount of \$145,955.40; for replacement of personal property items taken by ServPro and/or CRDN at the specific request and instruction of Defendant, or alternatively, that Defendant be ordered to satisfy any outstanding costs owing to ServePro and/or CRDN and be ordered to insure the return of said personal property items to Plaintiffs herein; for additional living expenses and the cost of debris removal; and for such other costs and damages as a trier of fact determines; and for prejudgment interest; and for Plaintiffs' costs incurred herein.

COUNT II

COME NOW the Plaintiffs and for Count II of this cause of action against separate Defendant, State Farm Fire & Casualty Company, and in the alternative to Count I above, state, allege and aver as follows:

13. That Plaintiffs restate, reallege and incorporate by reference herein each and every allegation set forth and contained in the “General Allegations” and Count I above as if fully, completely and accurately set forth herein.

14. That Plaintiffs’ policy of insurance and the “Section I – Loss Settlement” provisions therein, specifically provides under “Coverage A – Dwelling” paragraph 1.A1 “Replacement Cost Loss Settlement – Similar Construction” that Defendant “will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the declarations, the damaged part of the property covered under Section I – Coverages, Coverage A – Dwelling, except for wood fences, subject to the following:

(1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property.”

15. That the actual cost to repair or replace the damaged residence is \$124,241.28.

16. That Defendant has breached the terms and conditions of these provisions of the policy by refusing to pay the actual cash value of the loss and thereby prevented Plaintiffs from replacing or repairing their damaged property.

17. That Defendant has failed, neglected and refused to pay the bill owing to ServPro in order for Plaintiffs to obtain the return of the repaired or reclaimed personal property items.

18. Further, Defendant’s policy contains a provision under “Coverage B – Personal Property” paragraph 1.B1 “Limited Replacement Cost Loss Settlement”, specifically subparagraph therein that:

(1) until repair or replacement is completed, we will pay only the

cost to repair or replace less depreciation;

(2) after repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have actually and necessarily spent to repair or replace the property;

19. That the cost to repair or replace the unscheduled personal property is \$54,921.

WHEREFORE, Plaintiffs pray for judgment against separate Defendant, State Farm Fire & Casualty Company, in the amount of \$179,162.28 for damage to the residence and personal property, for debris removal, and for additional living expenses in such amounts as the trier of fact determines; and for the costs of satisfying any indebtedness owing against Plaintiffs' personal property items to ServPro and the associated costs incurred in obtaining possession of Plaintiffs' repaired or reclaimed personal property items; for prejudgment interest; and for their costs incurred herein.

COUNT III

COME NOW the Plaintiffs and for Count III of their cause of action against separate Defendant, State Farm Fire & Casualty Company; and in the alternative to Counts I and II above, state, allege and aver as follows:

20. That Plaintiffs restate, reallege and incorporate by reference herein each and every allegation set forth and contained in the "General Allegations" and Counts I and II above as if fully, completely and accurately set forth herein.

21. That the actual cash value of the damaged residence was \$133,000; that the actual cash value of the unscheduled property was \$54,921; that there is currently an indebtedness owing to ServPro for the return of Plaintiffs' repaired or reclaimed items, plus the costs incurred in regaining possession of said items.

WHEREFORE, Plaintiffs pray for judgment against separate Defendant, State Farm Fire & Casualty Company, in the amount of \$187,921 for damage to the residence and personal property, for additional living expenses and the cost of debris removal in such amounts as a trier of fact determines, for the cost of obtaining possession of Plaintiff's personal items currently being held by ServPro and/or CRDN; for prejudgment interest; and for such other and further relief and orders as the Court deems just and proper in the premises.

COUNT IV

COME NOW the Plaintiffs and for Count IV of their cause of action against separate Defendant, State Farm Fire & Casualty Company, state, allege and avers as follows:

22. That Plaintiffs restate, reallege and incorporate by reference herein each and every allegation set forth and contained in the "General Allegations" and Counts I through III above as if fully, completely and accurately set forth herein.

23. RSMo. 375.420 provides as follows:

In any action against any insurance company to recover the amount of any loss under a policy of automobile, fire, cyclone, lightening, life, health, accident, employers' liability, burglary, theft, embezzlement, fidelity, indemnity, marine or other insurance except automobile liability insurance, if it appears from the evidence that such company has refused to pay such loss without reasonable cause or excuse, the court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed twenty percent of the first fifteen hundred dollars of the loss and ten percent of the first fifteen hundred dollars of the loss, and ten percent of the amount of the loss in excess of fifteen hundred and a reasonable attorney's fee; and the court shall enter judgment for the aggregate sum found in the verdict.

24. That the acts of Defendant above-described refusing to pay Plaintiffs their sums due without just reasonable cause or excuse entitle Plaintiffs to statutory damages, including penalties and attorney's fees.

WHEREFORE, Plaintiffs pray for judgment against separate Defendant, State Farm Fire & Casualty Company, for 20% of the first \$1,500 of the loss, and 10% of the amount in excess of that amount, and reasonable attorney's fees, and their costs incurred herein.

COUNT V

COME NOW the Plaintiffs in the alternative and for Count V of their cause of action against Defendants, State Farm Fire & Casualty Company and Lanette Epstein, state, allege and aver as follows:

25. That these Plaintiffs restate, reallege and incorporate by reference each and every fact and allegation set forth and contained in the "General Allegations" above and Counts I through IV above as if fully, completely and accurately set forth herein.

26. That at all times material and pertinent herein, separate Defendant, Lanette Epstein, was an officer, agent, servant and/or employee of separate Defendant, State Farm Fire & Casualty Company.

27. That all of the acts and occurrences on the part of Lanette Epstein occurred, transpired and took place all in and within the course and scope of her agency and employment with separate Defendant, State Farm Fire & Casualty Company.

28. That prior to the occurrence aforementioned, Plaintiffs herein presented to separate Defendant, Lanette Epstein, for the purpose of purchasing and procuring a policy of homeowner's insurance through State Farm Fire & Casualty Company for a home and real estate located at 131 Hwy 72, Bunker, MO 63629.

29. That Lanette Epstein did promise to Plaintiffs that she would procure a policy of homeowner's insurance for Plaintiffs' benefit, insuring the home and real estate located at 131 Hwy 72, Bunker, MO 63629.

30. That in consideration thereof, Plaintiffs paid a policy premium to Defendant, procuring insurance for the policy period of October 11, 2017 through October 11, 2018.

31. That Plaintiffs relied upon Lanette Epstein's promise to provide homeowner's insurance coverage to Plaintiffs as above-referenced.

32. Alleging further, Plaintiffs had a right to rely upon Lanette Epstein's promise that a policy of homeowner's insurance would and in fact did issue to Plaintiffs insuring the property above-referenced against damage or loss by fire and/or other perils.

33. That Lanette Epstein could and/or should have reasonably foreseen the precise action that Plaintiffs, James D. Yates and Hannah Yates, took in reliance upon Lanette Epstein's promise, and that Plaintiffs herein would not be required and would otherwise not need to seek or to procure a policy of homeowner's insurance elsewhere or from another source based upon the promise of Lanette Epstein.

34. That had Plaintiffs known that State Farm Fire & Casualty Company would not honor the homeowner's policy procured by Plaintiffs through Lanette Epstein, Plaintiffs would have sought a homeowner's policy of insurance elsewhere.

35. That injustice can only be avoided by enforcement of the promise made by Lanette Epstein to Plaintiffs herein.

36. That Plaintiffs have been damaged as set forth herein above.

WHEREFORE, Plaintiffs pray for damages against Defendants in a just and reasonable sum commensurate with the amount of injuries and damages sustained by Plaintiffs herein; plus interest; and for such other and further relief and orders as the Court deems just and proper in the premises.

COUNT VI

COME NOW the Plaintiffs, James D. Yates and Hannah Yates, through counsel, in the alternative, and for Count VI of this cause of action against Defendants state, allege and aver as follows:

37. That these Plaintiffs restate, reallege and incorporate by reference each and every allegation set forth and contained in the "General Allegations" above and in separate Counts I through V above, as if fully, completely and accurately set forth herein.

38. That Lanette Epstein did promise Plaintiffs to purchase and to secure a policy of homeowner's insurance for the home and real estate described herein above.

39. That in consideration of payment of a premium, Lanette Epstein issued a policy of insurance, specifically policy number 25-CV-P895-8 to Plaintiffs herein.

40. That the premium payment demanded by Defendants was in fact paid by Plaintiffs herein and received by Defendants.

41. That the above-referenced fire loss occurred on December 12, 2017, and subsequent to said loss, State Farm Fire & Casualty Company has refused to honor the terms and conditions of the contract of insurance issued by separate Defendants herein to Plaintiffs, specifically policy number 25-CV-P895-8.

42. That as a direct and proximate result thereof, Plaintiffs have been damaged as is set forth herein above due to Defendant's breach of the terms and conditions of its agreement and contract with Plaintiffs herein.

WHEREFORE, Plaintiffs pray for damages against Defendants in a just and reasonable amount commensurate with the amount of injuries and damages sustained by Plaintiffs herein; plus interest; and for such other and further relief and orders as the Court deems just and proper in the premises.

HENRY & WILLIAMS, P.C.

by:

/s/ Roy E. Williams, Jr.
Roy E. Williams, Jr. #38712
P.O. Box 617
West Plains, MO 65775
Phone: 417/256-8133
Fax: 417/256-8969
Attorneys for Plaintiffs.

IN THE CIRCUIT COURT OF REYNOLDS COUNTY, MISSOURI
CIRCUIT DIVISION

CERTIFICATE OF SERVICE

COME NOW the Plaintiffs, by and through counsel, and certify that a true and correct copy of Plaintiffs' First Set of Interrogatories and Request for Production of Documents and Things to Defendant Lanette Epstein, along with a copy of this Certificate of Service were attached to the Summons and First Amended Petition to be served in this cause.

HENRY & WILLIAMS, P.C.

by: /s/ Roy E. Williams, Jr.
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